

STATE OF MICHIGAN
COURT OF APPEALS

LILLIAN ROSE JOHNSON,

Plaintiff-Appellee,

v

RANDY LOUIS JOHNSON,

Defendant-Appellant,

and

RANDY RODERICK JOHNSON,

Defendant.

UNPUBLISHED

November 26, 2013

No. 307572

Delta Circuit Court

LC No. 10-020594-CH

AFTER REMAND

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

This appeal is back before this Court after remand. Defendant¹ appealed by right from the trial court's order quieting title to a 100-acre farm. We reversed the trial court's conclusion on the issue of delivery, and remanded for the trial court to reconsider the record evidence relating to delivery of the life-estate deed in light of the applicable presumption and shifting burdens of proof, and to make new findings of fact on this issue as it deemed appropriate. *Johnson v Johnson*, unpublished opinion per curiam of the Court of Appeals, issued May 28, 2013 (Docket No. 307572). We also directed the trial court to consider plaintiff's claim of undue influence. *Id.* On remand, the trial court made additional findings of fact and conclusions of law, finding that plaintiff had adequately rebutted the presumption of delivery, and further finding that plaintiff had proven her claim of undue influence. We affirm.

The facts of this case are set forth in our previous opinion. *Id.*, unpub op at 1-2. We therefore confine our discussion in this opinion to the issues of delivery and undue influence.

¹ As noted in the previous opinion, our use of "defendant" refers to Randy L. Johnson.

II. DELIVERY

The issue before the trial court on remand was whether plaintiff had “delivered” the life-estate deed to defendant.

A deed transfers an interest at the time of delivery, not at the time of recording. *Ligon v Detroit*, 276 Mich App 120, 128; 739 NW2d 900 (2007). “The purpose of the delivery requirement is to show the grantor’s intent to convey the property described in the deed.” *Energetics, Ltd v Whitmill*, 442 Mich 38, 53; 497 NW2d 497 (1993). Delivery does not necessarily require a physical transfer of the deed; instead, delivery simply requires “acts or words” of the grantor that show “an intention on [the grantor’s] part to perfect the transaction. . . .” *Schmidt v Jennings*, 359 Mich 376, 381; 102 NW2d 589 (1960). Manual delivery of a deed to a grantee is not conclusively dispositive on the issue of delivery. *Resh v Fox*, 365 Mich 288, 290-292; 112 NW2d 486 (1961). “[I]n considering whether there was a present intent to pass title, courts may look to the subsequent acts of the grantor.” *Havens v Schoen*, 108 Mich App 758, 762; 310 NW2d 870 (1981). When a grantee obtains a deed without the grantor’s knowledge or permission, there is no delivery. *Id.* at 765.

Recordation of a deed gives rise to a presumption of delivery. *Energetics*, 442 Mich at 53. This presumption is “but a rule of procedure used to supply the want of facts.” *Hooker v Tucker*, 335 Mich 429, 434; 56 NW2d 246 (1953). While it “merely shifts the burden of proof onto the party questioning the delivery,” *Havens*, 108 Mich App at 761, the burden so shifted is “the burden of moving forward with the evidence”; the burden of persuasion, i.e., the burden of proving delivery by a preponderance of the evidence, remains with the party relying on the deed. *Id.* When the party burdened by the presumption presents sufficient evidence to dispel the presumption, the opposing party must still carry the “burden of proving delivery and requisite intent.” *Id.*

On remand, the trial court acknowledged that it had initially erred in concluding that the unrecorded deed was placed in plaintiff’s safe. However, the trial court found the evidence sufficient to conclude that plaintiff never intended to deliver the deed to defendant, and sufficient to rebut the presumption of delivery. This evidence included “Plaintiff’s unwavering intent to follow the lawyer’s instructions to retain the deed and not allow its recording, perhaps not until after her death” and plaintiff’s “later statement to Attorney Rossell that she owned the land at issue and wanted to make a testamentary disposition of it with all of her children as beneficiaries.” Additionally, the trial court noted plaintiff’s surprise at learning of the deed’s recordation, as well as the fact that plaintiff never took possession of the deed after she signed it.

We agree with the trial court’s conclusion that the presumption of delivery was rebutted. See *Resh*, 365 Mich at 290; see also *Haasjes v Woldring*, 10 Mich App 100, 102; 158 NW2d 777 (1968). In the absence of the presumption, the trial court found that defendant had not carried his burden of proving delivery by a preponderance of the evidence. *Havens*, 108 Mich App at 761. The trial court noted that defendant’s own testimony did not support his claim of delivery; instead defendant testified that he talked to other people who urged him to ignore the attorney’s advice and record the deed.

We find no error in the trial court's conclusions, and affirm the trial court's holding that the life estate deed was never delivered to defendant.

III. UNDUE INFLUENCE

The trial court was also directed to consider plaintiff's claim of undue influence.

To establish undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, are not sufficient. [*In re Estate of Karmey*, 468 Mich 68, 75; 658 NW2d 796 (2003), quoting *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976).]

Here, the trial court found that defendant placed continuous pressure on plaintiff to use the land for his benefit, that plaintiff was intimidated by pressure from defendant, and that, based on the trial court's observation of both parties, plaintiff appeared submissive and often confused. The court further found that plaintiff was functioning at a low mental and physical capacity at the time she executed the life estate deed, because of her declining hearing capability, pain from her recent back and knee surgeries, and use of narcotic pain medication. The trial court also found that plaintiff was inexperienced in "land descriptions and transference matters" and placed her trust in defendant to carry out her wish that he receive five acres of the farm.

In light of plaintiff's weakened physical and mental condition, see *In re Cox Estate*, 383 Mich 108, 113-114; 174 NW2d 558 (1970), and plaintiff's trust in defendant to carry out her intent, see *Daane v Lovell*, 83 Mich App 282, 290; 268 NW2d 377 (1978), lv den 405 Mich 846 (1979), we conclude that the trial court did not err in holding that plaintiff had proven her claim of undue influence, and that it should be affirmed on this additional ground as well.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra